IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ARTHUR BEDROSIAN **v.** **THE UNITED STATES OF AMERICA, DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE**	**CIVIL ACTION** **NO. 15-5853**

Baylson, J. **September 20, 2017**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiff Arthur Bedrosian initiated this case in order to obtain a refund of the $9,757.89 that he has paid to Defendant, the United States, for his allegedly "willful" violation of an Internal Revenue Service ("IRS") reporting requirement. The government counterclaimed for the full amount of the penalty, arguing that it was owed $1,007,345.48. After denying summary judgment for both parties, the undersigned presided over a one day bench trial at which Bedrosian defended his actions and the government attempted to frame them as satisfying the requisite "willful" standard. Both parties then filed post-trial briefs in which they proposed findings of fact and conclusions of law, and responded to two questions posed by the Court: (1) does any precedent exist for finding willfulness based on conduct similar to that of Bedrosian, and (2) did the government sustain its burden of proof regarding the calculation of the penalty amount. (ECF 62, 63.) Having considered the trial record and the post-trial briefing, we outline here our findings of fact and conclusions of law.

I. Findings of Fact

Bedrosian is a successful businessman who has spent his career in the pharmaceutical industry, rising in the ranks to the position he now holds—Chief Executive Officer at Lannett Company, Inc., a manufacturer and distributor of generic medications. (ECF 60, Trial Tr. at 26, 79-80.) In the early 1970s, when he was just getting started in the industry, Bedrosian held a position with Zenith Labs that required a significant amount of international travel. (Id. at 27.) Rather than rely solely on traveler's checks to make purchases abroad, in or about 1973 he decided to open a savings account with Swiss Credit Corporation in Switzerland. (Id. at 28-31.) At some point, Union Bank of Switzerland ("UBS") acquired Swiss Credit Corporation and Bedrosian's account was switched to UBS. (Id. at 31.) Bedrosian initially used the account in order to have access to funds while traveling abroad but, as the years went on, he began to use it more as a savings account. (Id. at 30-31.) He did not take a particularly active role in managing the account, but was kept abreast of its activities via certain information UBS would mail him and through annual meetings he would have with a UBS representative. (Id. at 40-41.) In 2005, UBS approached Bedrosian with a loan proposal that he accepted whereby it would lend him 750,000 Swiss Francs and convert his savings account into an investment account. (Id. at 42-43; Pl.'s Ex. 6.) That transaction resulted in a second account being created for Bedrosian at UBS, although he claims that he always considered them one account. (Trial Tr. at 57-58.) In 2008, UBS informed him that he had sixty days within which to repay the loan, close his accounts, and transfer all assets therein to another bank. (Id. at 44-45.) Bedrosian moved the funds to a different Swiss bank called Hyposwiss. (Id. at 44.)

Throughout this thirty five year period, from 1972 until 2007, Bedrosian used the services of an accountant named Seymour Handelman to prepare his income tax returns. (Id. at 47.) Bedrosian did not tell Handelman about his Swiss account until some point in the mid-1990s, at which time Handelman advised him that he had been breaking the law every year that he did not report the account on his tax return. (Id. at 49-50.) Bedrosian asked Handleman what he recommended doing about it, and Handelman stated that he could not "unbreak the law," and should therefore take no action. (Id. at 50-51.) Handelman assured Bedrosian that his estate could deal with it upon his death, when his money was repatriated. Heeding Handleman's advice, Bedrosian continued to not report either Swiss account on his tax returns.

In 2007, Handelman died and Bedrosian began working with a new accountant, Sheldon Bransky. (Id. at 52-53.) The return that Bransky filed for Bedrosian in 2008, for tax year 2007, included, for the first time, an affirmative answer to the question asking whether "[a]t any time during 2007, [he had] an interest in or signature or other authority over a financial account in a foreign country." (Id. at 53-54; P9.) Switzerland is listed as the country in which the account was located. (Pl.'s Ex. 9.) Bedrosian also filed a Report of Foreign Bank and Financial Accounts ("FBAR") for the first time in which he reported the existence of one of his two UBS accounts. (Govt. Ex. L.) The FBAR only listed his UBS account ending in 5316, which had assets totaling approximately $240,000, and did not report the account ending in 6167, which had assets totaling approximately $2 million. (Trial Tr. at 19, 56-67.) The 2007 FBAR was signed on October 14, 2008. (Pl.'s Ex. 10.) Bedrosian testified that he has no recollection of discussing the Swiss accounts with Bransky and that he is not sure how Bransky knew to check the "yes" box or file the FBAR. (Trial Tr. at 54-55.) Rather, Bedrosian stated that he simply gave Bransky the same materials that he gave Handleman year after year—a compilation of all the tax-related documents he received over the course of the year—and then signed the return that Bransky prepared. (Id.)

Around this time, following Handelman's death, Bedrosian became more aware of the seriousness of reporting foreign bank accounts and less comfortable with continuing the non-reporting practice Handelman had condoned. (Id. at 60-61.) He went to his personal lawyer, Steven Davis, in late 2008 and told him the history of what had happened with the UBS account and Handelman's advice. (Id. at 61-63.) Notably, at the time Bedrosian took these steps to rectify the issue, the government had not begun its investigation of him and he did not know that UBS had turned his information over to the IRS. (Id. at 64-65.) Davis brought a tax attorney colleague, Paul Ambrose, into the discussion and Ambrose advised Bedrosian to engage an accounting firm to go back and amend his returns from 2004 to the present. (Id. at 62.) From that point forward, Bedrosian heeded the advice of counsel, amended his returns, and paid taxes on the gains from his Swiss accounts. (Id. at 67-68.) The IRS alerted him in April 2011 that it would be auditing his returns, and thus began the process that culminated in this lawsuit. (Id. at 73.) Bedrosian was cooperative and forthcoming in his dealings with the IRS agents charged with investigating him. (Id. at 73-76.)

Much of the testimony at trial concerned whether Bedrosian knew that he had two accounts at UBS or was under the impression that he just had one. It is undisputed that he elected to stop receiving written communication from UBS regarding his accounts in 1993 and again in 2004 and that he got most, if not all, information about the accounts from an annual meeting that he had with a UBS representative in New York. (Govt. Ex. F.) It is also clear that he closed each account via separate letter to UBS, one dated November 5, 2008 and the other dated December 2, 2008. (Govt. Exs. J, K.) Having established the factual record, we turn to the legal implications of Bedrosian's conduct.

II. Conclusions of Law

In our memoranda on summary judgment and on the government's motion in limine to exclude evidence from the IRS investigation, we summarized the legal framework governing the key question of whether Bedrosian's violation of Section 5314 was "willful". See Bedrosian v. United States, No. 15-5853, 2017 WL 1361535 (E.D. Pa. Apr. 13, 2017); Bedrosian v. United

States, No. 15-5853, 2017 WL 3887520 (E.D. Pa. Sept. 5, 2017). We reiterate, and expand on, that discussion for the parties and future litigants on the issue.

A. Standard of Review

Although the Third Circuit has not yet ruled on what standard of review applies to a determination of the validity of an IRS penalty under 31 U.S.C. § 5321, those courts that have considered the question have found the correct standard to be *de novo*. See United States v. Williams, No. 09-437, 2010 WL 3473311, at *1 (E.D. Va. Sept. 1, 2010), rev'd on other grounds, United States v. Williams, 489 F. App'x 655 (4th Cir. 2012) (looking to enforcement actions brought by the government in other contexts which require a *de novo* review, as well as the fact that Section 5321 provides for no adjudicatory hearing before an FBAR penalty is assessed, to conclude that *de novo* review is appropriate); United States v. McBride, 908 F. Supp. 2d 1186, 1201 (D. Utah 2012) (applying *de novo* standard to whether underlying penalty was valid).

B. Burden of Proof

The government bears the burden of proving each element of its claim for a civil FBAR penalty by a preponderance of the evidence, including the key question here of whether an individual's failure to report was "willful." Williams, 2010 WL 3473311, at *1; McBride, 908 F. Supp. 2d at 1201-02 (explaining that "[a]s with [g]overnment penalty enforcement and collection cases generally, absent a statute that prescribes the burden of proof, imposition of a higher burden of proof is warranted only where 'particularly important individual interests or rights,' are at stake") (quoting Herman & MacLean v. Huddleston, 459 U.S. 375, 389 (1983)); United States v. Bohanec, No. 15-4347, __F. Supp. 3d.__, 2016 WL 7167860, at *6 (C.D. Cal. Dec. 8, 2016) (holding that because "[t]he monetary sanctions at issue [in an FBAR civil penalty action] do not rise to the level of 'particularly important individual interest or rights,' . . . the preponderance of the evidence standard applies").

C. Analysis

i. Willfulness

Congress passed the Bank Secrecy Act ("BSA" or "Act") in 1970 in order to target the problem of the "unavailability of foreign and domestic bank records of customers thought to be engaged in activities entailing criminal or civil liability." California Bankers Ass'n v. Schultz, 416 U.S. 21, 26 (1974). The Act was intended to "require the maintenance of records, and the making of certain reports, which 'have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.'" Id. (quoting 31 U.S.C. § 5311). To that end, it granted the Secretary of the Treasury authorization to promulgate regulations prescribing certain recordkeeping and reporting requirements for domestic banks as well as individuals. Id. One such reporting requirement is the FBAR, which arises out of the mandate of Section 5314(a) and its corresponding regulations that all United States citizens must report on an annual basis to the IRS any "financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country." 31 C.F.R. § 1010.350(a); 31 U.S.C. § 5314(a). Failure to timely file an FBAR for each foreign financial account in which a taxpayer has an interest of over $10,000 results in exposure to a civil money penalty that varies depending on the taxpayer's level of culpability. 31 C.F.R. § 1010.306(c); 31 U.S.C. § 5321(a)(5). Specifically, non-willful violations of the FBAR reporting requirement result in a penalty not to exceed $10,000, whereas willful violations can lead to a penalty that is the greater of $100,000 or fifty percent of the balance in the account at the time of the violation. 31 U.S.C. § 5321(a)(5)(B)(i), (a)(5)(C). A "reasonable cause" exception exists for non-willful violations, but not for willful ones. 31 U.S.C. § 5321(a)(5)(C)(ii).

The parties have never disputed that Bedrosian meets all requirements of the relevant reporting laws—he is a U.S. citizen with a financial interest in a bank account in a foreign country that contained more than $10,000 during 2007. Where they disagree, and the only issue explored at trial, is whether Bedrosian's failure to file his 2007 FBAR was done with the requisite "willful" mental state. We discussed in our summary judgment memorandum that the precise definition of that term as used in Section 5321, the civil penalty provision, has not been clearly established by statute or precedent. But, we also noted that every federal court to have considered the issue has found the correct standard to be the one used in other civil contexts—that is, a defendant has willfully violated Section 5314 when he either knowingly or recklessly fails to file an FBAR. See, e.g., Williams, 489 F. App'x at 658; Bohanec, 2016 WL 7167860, at *5; McBride, 908 F. Supp. 2d at 1204. That definition contrasts with the one proposed by Bedrosian, which is that in order for the government to sustain a willful FBAR penalty, it must meet the standard used in the criminal context and show that his actions amounted to a voluntary, intentional violation of a known legal duty. See Cheek v. United States, 498 U.S. 192, 201 (1991). Although on summary judgment we declined to hold what the appropriate standard of willfulness was, we indicated that the civil standard stood on far stronger precedential footing. Consistent with those dicta, we now hold that Section 5321's requisite willful intent is satisfied by a finding that the defendant knowingly or recklessly violated the statute. The government need not prove improper motive or bad purpose.

To further elucidate the definition of "willfulness" in this context, we note that acting with "willful blindness" to the obvious or known consequences of one's actions will satisfy the standard. See McBride, 908 F. Supp. 2d at 1205 (citing Global-Tech Appliances, Inc. v. SEB S.A., __ U.S. __, 131 S.Ct. 2060, 2068-69 (2011)). Willful blindness is established when an individual "takes deliberate actions to avoid confirming a high probability of wrongdoing and [when he] can almost be said to have actually known the critical facts." Global-Tech Appliances, Inc., 131 S.Ct. at 2070-71. In the tax reporting context, the government can show willful blindness by evidence that the taxpayer made a "conscious effort to avoid learning about reporting requirements." Williams, 489 F. App'x at 659-60.

In order for an individual to act "willfully" in a situation "involving a requirement to report or disclose certain information to the IRS," he must engage in "conduct which is voluntary, rather than accidental or unconscious." McBride, 908 F. Supp. 2d at 1205; see Brounstein v. United States, 979 F.2d 952, 955-56 (3d Cir. 1992) (in case involving willful failure to pay taxes, holding that "willfulness is 'a voluntary, conscious and intentional decision to prefer other creditors over the Government'"). Further, reckless disregard satisfies the willfulness standard. McBride, 908 F. Supp. 2d at 1204. "While 'the term recklessness is not self-defining,' the common law has generally understood it in the sphere of civil liability as conduct violating an objective standard: action entailing 'an unjustifiably high risk of harm that is either known or so obvious that it should be known.'" Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47, 68 (2007) (quoting Farmer v. Brennan, 511 U.S. 825, 836 (1994)). Finally, in terms of the type of evidence capable of establishing willfulness, the government can meet its burden "through inference from conduct meant to conceal or mislead sources of income or other financial information," and may use "circumstantial evidence and reasonable inferences drawn from the facts because direct proof of the taxpayer's intent is rarely available." McBride, 908 F. Supp. 2d at 1205 (quoting United States v. Sturman, 951 F.2d 1466, 1476-77 (6th Cir. 1991)).

At trial and in his trial brief Bedrosian acknowledged that we were likely to conclude that the civil standard of willfulness applied, and he focused his advocacy on the argument that his actions were far less egregious than those of defendants found liable in other cases for willfully violating the FBAR requirement. He summarized the facts of three cases in which the willful penalty was imposed and compared them to his own conduct, contending that the record did not support a finding that he had acted with the requisite intent. The government countered with evidence intended to show that Bedrosian was well aware that his 2007 FBAR was inadequate, such as his business acumen, the fact that Handelman had told him in the mid-1990s that his failure to report his Swiss accounts was illegal, and various indicia that he knew that he had two accounts at UBS rather than just the one that he reported. The government additionally argued that even if it was true that Bedrosian did not know he had two accounts at the time he filed his 2007 FBAR, he easily could have gotten that information by reaching out to UBS.

We start from the premise that the question of "[w]hether a person has willfully failed to comply with a tax reporting requirement is a question of fact." Williams, 489 F. App'x at 658; see United States v. House, 524 F.2d 1035, 1045 (3d Cir. 1975) ("The question of willfulness is uniquely for the trier of fact."). Indeed, the Third Circuit has held that determinations of willfulness depend on consideration of the defendant's "state of mind, knowledge, intent and belief regarding the propriety of their actions." E.E.O.C. v. Westinghouse Elec. Corp., 725 F.2d 211, 218 (3d Cir. 1983). Therefore, it is not enough to simply read the black letter definition of the term—knowing or reckless violation of a statutory duty—in a vacuum; rather, disposition of this case requires a fact- and context-specific inquiry into Bedrosian's actions.

Here, the narrative developed at trial, largely via the credible testimony of Bedrosian, is that of an educated and highly financially literate businessman who took a calculated risk for several years by not complying with his tax reporting obligations. He admitted as much—that Handelman told him he had been breaking the law every year he did not report his Swiss accounts, and that he nevertheless continued to fail to report them, relying on Handelman's questionable advice. Nevertheless, Bedrosian is not before this Court for any of those violations of the tax law; rather, he is here solely for the determination of whether his failure to file an accurate FBAR for tax year 2007 was willful. After a careful review of the record, the trial transcript, and the parties' post-trial briefing, we cannot conclude, based on a comparison of the facts of this case compared with those of cases in which a willful FBAR penalty was imposed, that the government has proved, by a preponderance of the evidence, that Bedrosian's violation of Section 5314 was willful.

As stated above, this inquiry requires a probing of the factual circumstances of this case to determine whether Bedrosian had the requisite mental state. Having done so, it is simply not sufficiently clear from the record developed that he was willful in submitting his inaccurate 2007 FBAR. Rather, his actions were at most negligent, which does not satisfy the willfulness standard. There is no question that Bedrosian could have easily discovered that what had previously been one UBS account was now two, via the statements he occasionally received from the bank and the meetings he had annually with a UBS representative. In addition, the fact that he signed his 2007 FBAR two weeks prior to sending two separate letters to UBS to close his accounts sways in favor of an inference that he was aware of the existence of the second account at the time he filed the FBAR. Nevertheless, as discussed below, even if he did know that he had a second account yet failed to disclose it on the FBAR, there is no indication that he did so with the requisite voluntary or intentional state of mind; rather, all evidence points to an unintentional oversight or a negligent act.

The government contends that we should not concern ourselves with "whether [Bedrosian's] conduct was as egregious as the few other cases that have been litigated involving the FBAR penalty," and that we should instead take a broader view including other civil cases where willfulness was at issue. (ECF 63, Govt. Post-Trial Brief at 6.) We agree that willfulness findings in the larger civil context may be useful comparators, but consider the other FBAR penalty cases as the most on point precedent. To that end, perhaps most important to this decision are the crucial differences between this case and those in which a civil FBAR penalty has been sustained. In Williams, for example, the defendant deposited over $7 million into two Swiss bank accounts and failed to report the income from those accounts to the IRS from 1993 to 2000. Williams, 489 F. App'x at 656. In the fall of 2000, government authorities became aware of the accounts, the defendant retained counsel, and Swiss authorities froze both accounts. Even after facing significant government scrutiny regarding his compliance with federal reporting requirements, the defendant nevertheless filed an FBAR for tax year 2000 in which he did not disclose his interest in either Swiss account. The defendant also allocuted, in connection with a simultaneous criminal investigation, to having unlawfully failed to report the existence of the Swiss accounts on his 2000 FBAR. On these facts, the Fourth Circuit overturned the district court's finding that the defendant's violation of Section 5314 had not been willful, reasoning that the above-recited facts at least established reckless conduct. Id. at 660.

The defendant's actions in Williams stand in contrast to Bedrosian's in 2007 and 2008. Crucially, in Williams the defendant "acknowledged that he willfully failed to report the existence of the [Swiss] accounts to the IRS or Department of the Treasury as part of his larger scheme of tax evasion," via his guilty plea allocution. Id. Here, there obviously has been no such acknowledgement. In addition, where the defendant in Williams submitted the inaccurate

FBAR at issue after he was already the target of a government investigation regarding his noncompliance with federal tax law, showing a continued interest in misleading the authorities, Bedrosian was fully cooperative and honest with the IRS from the moment it began investigating him.

Another of the few cases to have considered this issue is McBride, in which the defendant, cognizant of an imminent sizable increase in his company's revenue, "sought a way to reduce or defer the income taxes that would normally be paid on [the] revenue," and hired a financial management firm to help him do so. McBride, 908 F. Supp. 2d at 1189. The firm proposed a plan, which the defendant accepted, to move profits of his company to offshore entities, thereby resulting in approximately $2.7 million in otherwise taxable profits of the company to be routed directly to the defendant. Importantly, when faced with the IRS' investigation, the defendant repeatedly lied and refused to produce requested documents. Id. at 1200. Again, the willful finding in McBride is hard to map onto the instant facts, which are significantly less egregious and show nothing close to the carefully planned and complex tax evasion scheme perpetrated by the defendant in that case.

United States v. Bussell, No. 15-2034, 2015 WL 9957826 (C.D. Cal. Dec. 8, 2015), a case not briefed by the parties but one in which the court granted summary judgment for the government on an individual's willful violation of the FBAR requirement, is similarly distinguishable from this case. In Bussell, the court found that the defendant had "clearly acted with reckless disregard [of the statutory duty]" because she had been convicted of bankruptcy fraud and tax fraud for failing to disclosing offshore accounts, was subjected to civil penalties for her failures to disclose the accounts, was aware of the duty to report them on her FBAR and nevertheless did not. Id. at *5. Again, here there is nothing close to that level of evidence showing Bedrosian's willful violation of the FBAR requirement.

The government urges us to consider other civil cases, outside of the FBAR context, in which there were findings of willfulness. It cites to Greenberg v. United States, 46 F.3d 239 (3d Cir. 1994), in which the court considered whether an individual had willfully failed to pay certain employer withholding taxes, which determination depended on the individual's knowledge that his company had not paid the taxes at the time he disbursed company funds to employees and other creditors. Id. at 244. The defendant was indisputably aware that the company was delinquent in remitting withholding taxes when he decided that he "must pay more urgent bills right away in order to keep the business going and would pay the taxes later." Id. at 241. In contrast, here, Bedrosian's knowledge that his 2007 FBAR was inaccurate is far less clear—he undoubtedly did not give the form the requisite attention, but it is not apparent that he submitted it knowing that it omitted the second UBS account. The government's evidence going to that point relies on inferential leaps on which we are unwilling to hang a finding that Bedrosian was willful. Furthermore, while the court's analysis of willfulness in the context of Section 6672 of the Internal Revenue Code is surely relevant to the instant determination, as it arises in the civil tax penalty context, we find the specific FBAR penalty cases more persuasive because they deal with the same unique reporting requirement at issue here.

In summary, the only evidence supporting a finding that Bedrosian willfully violated Section 5314 is: (1) the inaccurate form itself, lacking reference to the account ending in 6167, (2) the fact that he may have learned of the existence of the second account at one of his meetings with a UBS representative, which is supported by his having sent two separate letters closing the accounts, (3) Bedrosian's sophistication as a businessman, and (4) Handelman's having told Bedrosian in the mid-1990s that he was breaking the law by not reporting the UBS accounts. None of these indicate "conduct meant to conceal or mislead" or a "conscious effort to avoid learning about reporting requirements," even if they may show negligence. Williams, 489 F. App'x at 658.

It is obvious that Bedrosian should have handled the situation differently and, in 2007-2008, should have been more careful about reviewing the 2007 FBAR and in being aware of the fact that he had not one but two accounts at UBS. Nevertheless, the facts show that he did check the box indicating he had a foreign account on his 2007 tax return, he did identify Switzerland as the country in which the account as located, and he did file an FBAR for 2007 stating he had assets in a foreign account. His error was in failing to list the second account. Furthermore, he approached his personal lawyer and retained an accounting firm to file amended returns and rectify the issue prior to learning that the government was investigating him and prior to learning that UBS was turning his information over to the IRS. Although we apply the lower, civil standard of willfulness here, we nevertheless do not see Bedrosian's as the sort of conduct intended by Congress or the IRS to constitute a willful violation. This is especially so in light of the dearth of precedent finding a willful violation on comparable facts. Because we find that the government failed to meet its burden as to the willfulness requirement, we decline to engage in an analysis concerning the calculation of the penalty amount.

ii. Illegal Exaction

Having concluded that the government has not established that Bedrosian was "willful" in his violation of Section 5314, we must determine whether Bedrosian has made out a claim for illegal exaction. An illegal exaction claim "involves money that was 'improperly paid, exacted, or taken from the claimant in contravention of the Constitution, a statute, or a regulation.'"

Norman v. United States, 429 F.3d 1081, 1095 (Fed. Cir. 2005) (quoting Eastport S.S. Corp. v. United States, 178 Ct. Cl. 599, 605 (1967)). Where a taxpayer is able to establish that he paid taxes that were improperly collected by the government, he succeeds on such a claim. Id. Here, we found that the government failed to meet its burden to show that Bedrosian willfully violated Section 5314; therefore, we conclude that any money penalty exacted from Bedrosian under Section 5321(a)(5)(C), which permits the Secretary of the Treasury to, "[i]n the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314," impose a penalty in the amount of the greater of $100,000 or 50% of the balance in the non-reported account, was illegally exacted. See 31 U.S.C. § 5321(a)(5)(C), (D); Kipple v. United States, 102 Fed. Cl. 773, 777 (2012) (holding that "a necessary implication of 31 U.S.C. § 3720(A) [pertaining to the amount by which a person's tax refund may be reduced where that person owes a debt to a federal agency] is that an illegal exaction would arise if there was no legally enforceable debt"). The remedy must be a return of the money Bedrosian has paid. See Kipple, 102 Fed. Cl. at 777.

III. Conclusion

For the reasons explained above, the government has not met its burden to establish that Bedrosian willfully violated Section 5314. Consequently, the amount that Bedrosian paid in partial satisfaction of his allegedly willful violation of that section—$9,757.89—was illegally exacted from him and the Government owes him that sum.

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